MATRIMONIAL SUPPORT FAILURES: REASONS, PROFILES AND PERCEPTIONS OF INDIVIDUALS INVOLVED

VOLUME 1

SUMMARY REPORT

THE INSTITUTE OF LAW RESEARCH AND REFORM

402 Law Centre, The University of Alberta

Edmonton, Alberta, Canada

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VOLUME 1

SUMMARY REPORT

by

The Canadian Institute for Research

Calgary, Alberta, Canada

and

The Steering Committee

Prepared for

THE INSTITUTE OF LAW RESEARCH AND REFORM

402 Law Centre, The University of Alberta

Edmonton, Alberta, Canada

FOREWORD

There is little reliable information about the extent to which separated and divorced husbands (or, but rarely, wives) do or do not pay for the support of their separated and divorced spouses and for the support of the children who are dependent upon the couple; about the reasons why some husbands pay and others do not; or about the consequences of the burden of payment, on the one hand, or of the failure to pay on the other. The reports contained in these two volumes will materially add to the available information on these subjects, and the Institute of Law Research and Reform is therefore pleased to issue them. We hope that the reports will be of interest to a diverse audience: those who make decisions about legal and social policy, professionals in the areas of family law, the administration of justice, social policy, social assistance, social work, and those who suffer from the problems of payment and non-payment.

The technical reports in Volume 2 were prepared by the researchers, The Canadian Institute for Research, who were left free to analyze and interpret the data discovered by their research. The summary report in Volume 1 was prepared jointly by the researchers and the project's Steering Committee; it summarizes the effect of the technical reports for the benefit of those who do not read the technical reports and for the benefit of those who wish to have informed access to them. Opinions expressed in the reports are accordingly the opinions of those who expressed them and are not necessarily the opinions of the Institute.

For reasons of modesty, the acknowledgements later in this volume cannot recognize the work of the Steering Committee (in which my participation was for liaison and business purposes) and the researchers. The Steering Committee supervised the design and implementation of the complex and ambitious research programme and the preparation of the reports, giving generously of their time and expertise over a period in excess of 2 years, and the project would not have been possible without them. Mr. Rick Powell, the principal investigator, and his colleagues carried through with distinction the research work itself and its analysis and the preparation of the reports.

W. H. Hurlburt
Director
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March 1981

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We are grateful to Health and Welfare, Canada for partial funding of this project as well as for giving us the expertise of one of their senior policy analysts as a member of our Steering Committee.

A study of this magnitude requires the contributions of many people. We are grateful to J. Evariste Theriault of Health and Welfare, Canada, Dr. Sharon Sutherland of Carlton University and Ms. Maureen O'Neil of Status of Women Canada for their advise and encouragement throughout the life of this study.

The study was also dependent upon the cooperation of the administrative and clerical staff of the courts of Alberta. We are grateful to Mr. Ross Paisley, Q.C., Deputy Attorney General for giving us access to Family Court records and for giving us the expertise of one of his senior solicitors as a member of our Steering Committee. The administrative and clerical staff of the Supreme Courts (now the Courts of Queen's Bench) and Family Courts in Edmonton, Calgary, Lethbridge and Grande Prairie who freely offered us help and very courteous cooperation are too numerous to be mentioned. We are indebted to them. We are specially thankful to Mr. Brian Thomson, Clerk of the Edmonton Family Court, Mr. Ken Falle, Clerk of the Calgary Family Court and Mrs. Karen DeGroot, Clerk of the Court, Divorce Section, Court of Queen's Bench, Edmonton for their assistance.

The cooperation and assistance of Alberta Social Services and Community Health, especially of Mr. Stanley Mansbridge, Chief Deputy Minister and Mr. Don Junk, Assistant Deputy Minister, is gratefully acknowledged. The department not only co-sponsored and partially funded this research but also provided the expertise of two of its senior staff members as Steering Committee members for this study.

Thanks are also due to Professor Gordon Bale of Queen's University, who was a member of the Steering Committee until his departure from the Institute in 1979. We thank Ms. Tillie Shuster for editorial suggestions and proofreading the entire report.

Finally, we thank all those men and women in Edmonton and Calgary who answered the questionnaires for this study. Without their cooperation this study would not have seen the light of day.

Vijay K. Bhardwaj
Project Monitor

March 1981

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Matrimonial Support Failures: Reasons, Profiles and Perceptions of Individuals Involved

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MATRIMONIAL SUPPORT FAILURES: REASONS, PROFILES AND PERCEPTIONS OF INDIVIDUALS INVOLVED

Executive Summary and Summary Report

EXECUTIVE SUMMARY

In September 1976 the Institute of Law Research and Reform established a Committee on Matrimonial and Child Support. The Committee investigated reasons for the short-comings of the existing system of matrimonial and child support. Its investigations indicated that there was very little solid data available to form the basis of a legal and policy reform process. The aim of this study was to develop profiles of the individuals involved in maintenance payments, to document their perceptions and to investigate the reasons for the payment and non-payment of maintenance orders.

Given the dearth of available information, a wide-ranging descriptive study was indicated. Five separate subsidiary studies were carrried out: a study of Supreme Court (now called the Court of Queen's Bench) records in Edmonton and Calgary, a study of Family Court records in Edmonton, Calgary, Lethbridge and Grande Prairie, door-to-door surveys of the men and women involved with maintenance orders and a study of defaulters.

The major findings of the study are presented below in point form.

- Over two-thirds of the divorces granted in Edmonton and Calgary are for couples married in Alberta.
- Periodic maintenance awards typically involve one or two children.
- The average duration of marriage at the time of the divorce was 10.5 years.
- Slightly more than half of the women surveyed were employed full-time at the time of the study and about one woman in five was on social assistance. About a third of the women said that they had been employed for less than half of the time since their divorce/separation.
- Over 80% of the women surveyed reported net monthly incomes of less than $1000.
- Eighty five percent of the men surveyed were employed or self employed at the time of the study. Nearly two-thirds reported that they had been employed continuously since their divorce/separation.
- The most important factor influencing the granting of maintenance awards was the presence or absence of dependent children. Wives were rarely granted periodic awards when no dependent children were involved. Even when there were dependent children, only 18% of the wives received periodic awards.
- About a third of the cases involving dependent children did not contain a maintenance award.

- If the husband was the petitioner, maintenance was less likely to be granted.
- If adultery was cited as a ground for divorce and the husband was the petitioner, maintenance was less likely to be granted. If the wife was the petitioner and adultery cited, maintenance was more likely to be granted.
- The income of the husband was strongly associated with the amount of awards to both the wife and children; there was no association between the income of the wife and the amount of the award.
- The amount of awards to children in cases which the wife was receiving social assistance tended to be lower than in other cases.
- The survey of women indicated that about half of all maintenance orders in Calgary were paid up at the time of the study. However only about a third of the ex-husbands paid their orders every month and in the full amount. About 30% of the women interviewed said that their husbands/ ex-husbands had paid nothing in the past year.
- Thirty-eight percent of the Edmonton and Lethbridge cases had made all their payments over the duration of the case. Twenty-three percent of the Edmonton and 7% of the Lethbridge cases had made no payments at all over the duration of the cases.
- Enforcement proceedings are commonly initiated in Family Courts: 87% of the cases in Edmonton and 74% in Calgary showed evidence of some enforcement.
- There was some evidence that enforcement proceedings are followed through in many instances. Forty percent of the Edmonton cases contained unserved summonses an 14% contained unserved warrants.
- About 70% of a random sample of defaulters in Edmonton and Calgary were traced without using extensive tracing procedures.
- There was some evidence that poor record-keeping affected enforcement. The initiation of enforcement was more common in the 54% of cases in which researchers were able to locate ledger cards in Calgary than the cases for which no ledger card could be found.
- The survey of women indicated that there is a lack of faith in the efficiency of enforcement among many women and that this may cause some not to file a complaint.
- Comments made by men suggest that better enforcement may lead to considerable resistance.
- Low income appeared to be associated with irregular payment of maintenance orders but not with non-payment in the survey of men.
- Maintenance orders for marriages of long duration were better paid than for marriages of short duration.

- There was some evidence that larger maintenance orders were better paid than smaller orders.
- There was no statistical evidence that dissatisfaction with access arrangements was associated with irregular or non-payment. However there were some respondents in the men's survey who gave this as their most important reason.
- The majority of both men and women interviewed gave a continued sense of responsibility for the children as the main reason for regular payment.
- Fear of enforcement proceedings was not a major reason for payment among men.
- Inability to afford payments was a major reason given by men for non-payment. However, the question of 'affordability' is relative: it depends upon the priority accorded by men to maintenance obligation relative to other financial obligations.
- There was a great amount of missing information in Supreme Court files. This information included: incomes of each spouse, employment status, assets and debts and whether or not a spouse was on social assistance. It seemed unlikely that the courts received sufficient validated evidence to review the fairness and appropriateness of the minutes of settlement.
- Information relating to income, assets, debts, and employment was recorded very rarely in the files of all four Family Courts visited. Record keeping systems varied from court to court and there was considerable evidence that ledger cards were not maintained well in Calgary and Grande Prairie courts.
- There was widespread dissatisfaction with the legal proceedings connected with the granting of awards and enforcement by both men and women.
- At the time of the granting of a decree nisi about one third of the wives were on social assistance. No trends in this pattern were discovered over the eight years of files reviewed in the Supreme Court Study. The Family Court Study revealed that about a quarter of the women were on social assistance at the time of the first show cause hearing. In the survey of women, it was found that 21% were on social assistance at the time of the study.

SUMMARY REPORT

MATRIMONIAL SUPPORT FAILURES: REASONS, PROFILES AND PERCEPTIONS OF INDIVIDUALS INVOLVED

INTRODUCTION

Background

The increasing rate of marital breakdown in Canada (and in Alberta in particular), and the resulting problems associated with matrimonial and child support have been of great concern to law makers, law reformers, the legal profession and provincial and federal social agencies. There has been, among these groups, a general recognition of the need to reassess the laws, legal procedures and governmental policies related to matrimonial and child support. Nonetheless, it was also recognized that there was almost no reliable information available to define the nature and extent of the problem; let alone provide an adequate information base to guide a reassessment and reform process.

The Institute of Law Research and Reform has had a long standing interest in the problems of inter-spousal support, and in September 1976 established the Committee on Matrimonial and Child Support. The Committee on Matrimonial and Child Support's interest was to investigate reasons for the shortcomings of the existing system of matrimonial and child support, with a view to recommending alterations in the guiding legislation and administrative procedures of central elements of the present system.

The Committee identified two systems of matrimonial and child support. There is a public system which comes to the aid of families of ostensibly lowest income and assets, and a private system whose characteristics - whether successes or failures - are largely unknown. Almost certainly failures in the private system as evidenced through default on obligations place increasing strain on the public system. Dependent spouses may seek public subsidy, as it has the benefit of being paid regularly without risk of default, instead of pursuing their rights against their spouses. In effect, this means that the state assumes the legal obligations of the husband to maintain his wife and children.

The higher projected rate of marital breakdown will almost certainly place increasing strains on both public and private support systems. Therefore, it was thought to be important to establish whether there were any policy and legal changes which could mitigate the pressures on both support systems. These changes could not be considered because of the dearth of available information on the incidence of regular payment of and default on maintenance orders, why some orders are paid regularly and others are not, the perceived and actual effectiveness of the legal process and the extent and effectiveness of current enforcement procedures.

Given the lack of data on many areas associated with maintenance, the main focus of this study was intended to be descriptive rather than analytical. That is to say, an attempt has been made to describe, in as comprehensive a way as possible, what is, rather than to analyze why it is so. Some of the data, nonetheless, is relevant to policy analysis because it may lead to a better understanding of the problem in its many aspects and an assessment of alternative ways of dealing with it.

AIMS OF THE STUDY

There were seven major aims to the study. These are described below together with brief explanations as to why the Committee on Matrimonial and Child Support thought them to be important.

1. To develop a profile of people involved in maintenance orders.

As has been suggested in the background to the study, the Committee wanted much more information on both parties involved in the matrimonial support system. Part of this information was basic data such as age, education, income, residence and so on.

2. To examine factors relating to the granting of maintenance awards and to the amount of such awards.

The divorce and separation laws specify that amount of maintenance awarded should be determined mainly by two factors: the ability of the one spouse to pay and the financial need of the other spouse and dependent children. The Committee was interested in finding out how well these criteria have been applied in practice together with any other criteria that may affect the awarding of maintenance and the amounts of such awards.

3. The incidence of payment and non-payment of maintenance orders.

The Committee was aware that the incidence of default on maintenance orders was high in Alberta, but there were no data available to indicate the extent of the problem. As such, the development of reliable and valid estimates of the frequency of default was of great priority.

4. The relationship between enforcement and payment.

Much of the public attention on the payment and default on maintenance orders has focussed on the matter of enforcement. Therefore, it was of considerable importance to determine the extent to which maintenance orders are enforced, and, if possible, to determine how effective enforcement has been, and how effective increased enforcement procedures would be.

5. Factors relating to and the reasons for payment and non-payment of maintenance awards.

Do men renege on their maintenance obligations because they cannot afford to fulfill them? Is it because of dissatisfaction with custody or access arrangements? Or is it because they feel that their legal obligations will not be enforced? These were some of the questions

asked by the Committee. However, there was little data available to determine why some men pay and why some men do not pay. The Committee felt that the answers to such questions would be of great relevance to law reform and policy making.

6. The adequacy of the system of court administration relating to the granting of orders and their subsequent enforcement.

As maintenance orders are granted by courts and enforced through courts[1] the Committee thought that in the interest of fairness and efficiency in making the original orders and for collection proceedings, the courts need accurate information on the addresses and finances of the parties.

7. Marriage breakdown and social assistance.

As stated in the introduction, one of the major concerns of governments relating to marriage breakdown is its effect upon social assistance payments. While some estimates are available on the number of single parent families on social assistance, the Committee felt it important to gain more information on this issue.

Research Strategy

The Committee decided to concentrate on three sources of data for a study on matrimonial and child support: records available in Supreme Courts,[2] records available in Family Courts, and the people who are actually involved in the payment or receipt of maintenance orders. It is important to recognize that the three sources of data represent separate but interlocking 'populations' in the statistical sense of the word. Some, but by no means all, of the maintenance orders made in Supreme Courts are registered in Family Courts for the purposes of enforcement. Family Courts may also grant maintenance awards. To complicate the situation, there are people who pay and receive payment on a voluntary basis: such cases may not be recorded in either the Supreme or Family Courts.

As a result, each of the three sources of data represented 'populations' from which some of the research questions could be answered, but none of the three represented a 'population' which could answer all of the questions. The court files, besides not containing information relating to the 'human' side of the issue, represented incomplete 'populations' for the purposes of study. People involved in paying and receiving payment from maintenance orders, while representing a whole 'population', could not be assumed to provide informed responses to several of the objectives which related to the administration of justice.

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[1] Maintenance orders are granted by the courts on the basis of what is adduced before the court. The court hears a cause between an applicant and a respondent each of whom presents grounds for the remedy they seek. The court orders a remedy. In Alberta enforcment, in practice, rests with the party in whose favour an order is made.

[2] In July 1979, Alberta Supreme Courts were amalgamated with District Courts to form the Alberta Courts of Queen's Bench. As almost all of the records used in the study were Supreme Court records, the report will refer to what is now the Court of Queen's Bench, as the Supreme Court.

The Steering Committee on Matrimonial and Child Support decided at the outset that the study should use multiple data sources to portray, in effect, several different snap-shots of the same phenomenon. Each snap-shot would be incomplete, but together they would provide a full picture. It is for this reason that the detailed results of the study have been written up in five separate technical reports.

The five separate efforts for recollecting data are described below. Readers who are interested in the technical aspects of design strategy and sampling are urged to consult the various technical reports.

1. Study of Supreme Court Records

This study was based on a random sample of over 800 records located in Edmonton and Calgary Supreme Courts. The research was restricted to divorce cases which were filed between 1972 and 1979. The primary aims of this facet of research were to (a) identify the proportion of divorce cases containing maintenance awards and certain characteristics of these cases, (b) to examine factors which relate to the granting of awards and to the amounts of maintenance awarded.

2. Study of Family Court Records

Family Court also awards maintenance under the Domestic Relations Act to separated spouses, and may enforce payments of orders issued by the Supreme Court. Family Courts maintain files of maintenance orders under their jurisdiction together with ledger cards which constitute a record of payment. Over 800 randomly sampled files were examined in Calgary and Edmonton. In addition, another 155 files were sampled in Lethbridge and Grande Prairie Family Courts.

The main purposes of the Family Court Records study were to: a) describe the main characteristics of maintenance orders made by and/or enforced through Family Court; b) determine the incidence of payment and non-payment; c) examine factors relating to enforcement and payment of orders; and d) examine factors relating the payment and non-payment of maintenance orders.

3. Survey of Women

This study was based on a door-to-door survey of about 200 women in Calgary and Edmonton who indicated that they were (or should have been) receiving payment on maintenance orders. In order to find these women more than 13,000 households were visited. The sampling design was based on a random, cluster sampling procedure.

This study was carried out to discover: a) the incidence of payment or default; b) the incidence of social assistance as a result of marriage breakdown; c) the opinions of women concerning the granting and enforcement of maintenance; and d) common problems and experiences of women relating to the payment or non-payment of maintenance orders.

4. Survey of Men

Initially the survey of men was carried on at the same time and using the same procedure as the survey of women. However, because of a very high rate of refusal and research deadlines, the sampling procedure was modified. As a result, the final sample of 262 men was not random, but a relatively good cross-section of good and poor payers of maintenance orders was obtained.

This survey was carried out to: a) find out the incidence of payment and non-payment of maintenance orders; b) outline the problems and experiences of men in paying maintenance orders; c) gain insight into the reasons for payment and non-payment; and d) document the perceptions of men concerning the legal system relating to maintenance.

5. Study of Defaulters

This study was divided into two parts. The first was an attempt to trace a random sample of nearly 300 defaulters on maintenance orders as identified in Family Court records. A step by step tracing procedure was used which involved researchers, the Search Unit of Social Services and Community Health and finally, a professional tracing company. After the individuals had been traced, they were asked to complete a questionnaire which was then mailed to them together with a postage paid envelope. Potential respondents were followed up by telephone after a period of two weeks. The response rate was not very good - a total of 38 questionnaires out of the 105 defaulters traced by researchers were in fact received.

There were three main reasons for this study: a) to determine the proportion of defaulters who could be traced; b) to determine the level of difficulty involved in tracing; and c) to find out the motives for non-payment.

Outline of Report

The research strategy employed for this study made use of multiple data sources, and the detailed results of each of these subsidiary studies have been described in a series of five technical reports. This is a summary report and, for the sake of simplicity, implications concerning data collection procedures and the results themselves have been presented in an abbreviated manner. However, cross-references have been made to the technical report for readers who are interested in pursuing particular findings and recommendations further. For the sake of brevity, references to the technical reports have been presented as follows:

SC - Study of Supreme Court Records
FC - Study of Family Court Records
SW - Survey of Women involved with Maintenance Orders
SM - Survey of Men involved with Maintenance Orders
SD - Survey of Defaulters

In addition, the technical reports have been divided into numbered sections and subsections. For example, a cross-reference would appear like this: (SM: 4.2, p. 261), meaning that an expanded treatment of a finding can be found in section 4.2 of the Survey of Men Involved with Maintenance Orders on page 261.

These five studies have been presented in separate technical reports. This, the main report, is an attempt by the Steering Committee, together with the consultant researcher, to summarize the major findings of the study. Such a summary is beset with a number of limitations given the sheer number of variables (over 1000) addressed in the five subsidiary studies.

The first of these is the inevitable compromise that has to be made between technical accuracy and readibility. For the sake of ease of presentation and comprehensibility, technical language has been avoided as much as possible. Readers who wish to examine the results in detail are urged to refer to the Technical Reports.

Secondly, a summary such as this can only deal with some of the issues relating to the social, legal and administrative consequences relating to the payment and non-payment of maintenance orders. The issues that have been examined in the summary reports are those which seem to be of greatest 'general' interest. Some readers may be disappointed that some aspects of the issue of maintenance payments are not examined in more depth. Again, we can only urge that readers refer to the Tecnical Reports which may contain more information that relates to their concerns.

Results

The results of the five technical reports have been summarized using the seven general objectives of the study as a basis. The intention is to provide the reader with a relatively brief and non-technical overview of the findings as they relate to those objectives. The summary is not meant to be comprehensive and, as such, many results have been omitted. More information can be obtained by consulting the technical reports.

Profile of Men and Women involved with Maintenance Orders

The checklist for the studies of Supreme and Family Courts and the questionnaires for men and women were designed to elicit information which could be used to develop a profile of the 'populations' involved. Unfortunately, such basic data as income, debts, source of income, etc. were not commonly recorded in court files. This made the task of constructing complete and valid profiles from court records impossible. Nonetheless, relatively complete and valid data was collected on certain personal characteristics of the people involved. The information collected from the surveys was in most cases complete and the validity of the profiles developed was dependent upon the randomness of the samples. In the case of the men's survey, the randomness of the sample was suspect. The sample collected for the women's survey did appear to be random.

Incidence

A rough indication of the proportion of households who are either paying or receiving maintenance payments was provided in the Survey of Women. In this survey, a woman was prepared to answer the questionnaire in one household of every 55 visited. Assuming that there are as many households involved in paying maintenance as in receiving payment, this would mean that one household in every 27 or 28 in Edmonton and Calgary is involved in periodic maintenance payments. This estimate is almost certainly bound to be low given the refusal rate associated with door-to-door surveys. Nonetheless, periodic maintenance payments associated with marriage breakdown appear to be a relatively common phenomenon in the two cities.

Age

At the time of the decree nisi the average age of the men was 36 and of the women 32. (SC: 2.3.5, p. 41.) The average age of the men surveyed was also 36. (SM: 2.1, p. 265.) The women's survey had an average age of 35. (SW: 2.1, p. 153.)

Education

Education was not recorded in the court files. From the household survey it could be determined that forty-four percent of the men were not graduates of high school and 33% had some post-secondary education. (SM: 3.2, p. 265.) The corresponding figures from the women's survey were 43% and 31% respectively. (SW: 2.2, p. 153.)

Residence at the Time of Marriage

Over two-thirds (68%) of the Supreme Court sample had been married in Alberta. (SC: 2.2.1, p. 38.) Unfortunately, this information was not often recorded in Family Court files, and a valid estimate could not be obtained.

Duration of Marriage

The average duration of marriage at the time the decree nisi was granted was 10.5 years. (SC: 2.2.3, p. 38.) This figure was replicated closely in the Family Court study, although in this case the duration of marriage referred to either the date of separation or the date of divorce (nisi). (FC: 2.3.2, p. 90.)

Number of Dependent Children

About three-quarters of the families who were involved in a Supreme Court maintenance order had one or two dependent children. (SC: 2.2.4, p. 38.) Some Family Court cases tended to involve more dependent children, but there were one or two dependent children in two-thirds of the cases involved. (FC: 2.3.6, p. 90.)

Employment and Income

At the time of the study, slightly more than half of the women surveyed were employed full-time. (SW: 2.3, p. 159.) The majority of women who were working, did so in the clerical/sales/service sector. (SW: 2.5, p. 153.) Over a third of the women stated that they had been employed for less than half of the time since their separation or divorce. Over 80% indicated that their net monthly income was less than $1000. (SW: 4.2, p. 159.)

Eighty-five percent of the men interviewed were employed full-time or self-employed at the time of the study (SM: 3.3, p. 265.). Nearly two-thirds (61%) said they had been employed continuously since the time of their separation/divorce and another 20% said they had been employed more than three-quarters of the time. Only 8% had been employed for less than half of the time. (SM: 3.4, p. 265.) The average net monthly income of the men sampled was about $1500, although 35% said they had net monthly incomes of less than $1000. (SM: 3.4, p. 265.)

Factors Relating to the Granting of Maintenance Awards and to the Amount of Such Awards

The most important factor influencing the granting of maintenance awards is the presence or absence of dependent children. Over two-thirds of the divorce cases in Supreme Court involving dependent children contained maintenance awards of some kind; this compares with only 14% of the cases without dependent children. (SC: 2.4, p. 50.)

The maintenance awards of particular interest to this study were periodic awards. These awards obligate the spouse (almost always the husband) to provide maintenance support on a continuing basis to the children and sometimes the wife of the former marriage. In Supreme Courts, periodic awards were generally found to be related to children. When there were no children involved in the marriage, less than 5% of the wives received periodical awards. Even when dependent children were involved only 18% of the wives received such awards. In contrast, 65% of the cases involving dependent children contained a periodic award for the children. (SC: 10.6, p. 53.)

The spouse who petitioned for divorce appeared to influence the awarding of maintenance. If the husband was the petitioner, a maintenance award was less likely to be granted. This relationship held whether or not dependent children were involved. (SC: 2.3.1, p. 41.) The alleged grounds for divorce also seemed to be related to the granting of awards. If the husband was the petitioner and adultery and/or physical cruelty were cited, maintenance was less likely to be awarded. If the wife was the petitioner and she cited adultery as a marital offense, she was very likely to receive an award. (SC: 2.3.10, p. 47.)

The Supreme Court Study also examined a number of factors which might be related to the amount of maintenance awarded. These included: the income of both spouses, the identity of the presiding judge, contestation of the award, the number and ages of the children, duration of the marriage, ages of spouses at the time of divorce and the alleged grounds for divorce.

The amount of the award to both wives and children was directly related to the reported income of the husband, although the association was stronger with the award to wives. It should be mentioned, however, that the incomes recorded were those given by the petitioner and as most cases were uncontested, these may not have been accurate. Also there was a substantial amount of missing information. There was no correlation between the reported income of wives and the amount of maintenance, but again this data was not often recorded in the files. (SC: 4.1.2, and SC: 4.1.3, p. 59-60.)

Although the mean amounts of awards did vary from judge to judge, there were significant differences and the study was inconclusive.

There was no conclusive finding regarding contestation: most cases were uncontested and a good statistical comparison could not be made.

Duration of marriage and the ages of the spouses were not associated to any important degree with the amount of awards to spouses and children. This was also the case with the number of children in the family unit and ages of the children. (SC: 4.4, 4.5, 4.6, and 4.7, pp. 62-64.)

There was a noticeable difference between the amount of awards to children and whether or not the wife was on social assistance at the time of petition. The mean award to children in cases of social assistance was $27 less than in cases which did not involve social assistance. (SC: 3.7, p. 63.)

Incidence of Payment and Default

There were three potential sources of data which related to the incidence of payment and default: the Family Court Records Study, the Survey of Women and the Survey of Men.

In the Family Court Study, the data from only two of the four court locations could be used to provide relatively unbiased estimates of payment records. (FC: 2.1, p. 82.) Those were in Edmonton and Lethbridge; there were too many cases of missing data in the Calgary and Grande Prairie Courts to provide valid estimates. The latter may in part be due to the fact that Calgary was undergoing a filing system change at the time of the study. Furthermore, in both Calgary and Grande Prairie, ledger cards are started and annotated only upon receipt of a cheque. Hence there would be no record of arrears unless payment had been made initially.

At the time of the study, a slight majority of both maintenance orders and show cause cases were in arrears. (FC: 2.1.2, p. 83.) When arrears orders were considered alone, less than 20% were paid up, and about a quarter were decreasing the amount owing. The majority of cases were not making payments and the amount of arrears was increasing. (FC: 2.1.2, p. 83.) About two-thirds of the cases in both Courts had made a payment in the six months prior to the study. However, only about one half of the cases had made a payment in a given month (the month chosen was November 1979). (FC: 2.1.3, p. 83.)

When the full duration of the case was considered, 38% of both the Edmonton and Lethbridge cases sampled had made all their payments. Twenty-three percent of the Edmonton cases and 7% of the Lethbridge cases had made no payment whatsoever over the duration of the case. Lethbridge cases tended to make partial or intermittent payments more than those in Edmonton. (FC: 2.1.3, p.83.) This last finding is probably the result of differing policies of the two court administrations; in Lethbridge partial payments are accepted if men are not able to make payments in full.

The estimates provided by the Study of Family Court records, while relatively accurate reflections of the populations they represent, do not give a good estimate of the overall incidence of payment and default simply because not all maintenance orders are recorded in Family Court.

The best estimate of the incidence of payment and non-payment of maintenance orders that is provided in this study, comes from the Survey of Women. About half of the women surveyed (52% in Calgary and 53% in Edmonton) said that their ex-husbands were up-to-date with their payments at the time of the study. (SW: 9.2, p.176.)

However, this result does not mean that half of the maintenance orders are always fully paid up. An index of payment status was created by combining the numbers of payments made over the past year with the proportion of the amount usually paid. (SW: 9.0, p.173.) Using this index it was found that about a third of the ex-husbands (34% in Calgary and 32% in Edmonton) were excellent payers, i.e. they paid the full amount every month. Around 15% of the ex-husbands in both cities were fair payers (generally speaking, they were sometimes in arrears but made it up later). Twenty-seven percent of Calgary respondents and 19% of those in Edmonton indicated that their ex-husbands were poor payers, i.e. they had paid something over the past year but were very irregular. Finally, a quarter of the Calgary sample and a third of the Edmonton respondents indicated that their ex-husbands were non-payers. (SW: 9.6, p.176.) Non-payers were defined as those who had not paid anything in the past year.

The results of the Survey of Men did not provide a good estimate of the incidence of the payment and non-payment because of the likelihood of bias in the sample. (SM: 1.4, p. 258.)

The Relationship Between Enforcement and Payment

As mentioned in the background to the study, the attention of governments has primarily been focussed upon the issue of enforcement procedures. It is important to note that enforcement is not an act but rather a process that consists of a number of steps. In most cases, a complaint of default must be made. In Alberta, it is not necessarily the responsibility of the court clerk to notify the court that a particular order is in arrears. There are varying opinions as to who should be responsible for initiating complaints of default. Depending upon the status of the case a summons for a show cause hearing or a warrant may be issued. This necessitates the tracing of the individual in question in order that the summons or warrant be served on him.

The study of Family Court records indicates that most cases involve enforcement proceedings to some degree. Seventy-four percent of the cases in Calgary, 87% in Edmonton, 81% in Lethbridge and 50% of the cases in Grande Prairie showed some evidence of enforcement. The figure for Grande Prairie is probably unreliable in this case.* Eight percent of the Calgary cases and 12% of those in Edmonton contained at least one prison committal order in addition to the issuance of summonses and warrants. Fifteen percent and 11% of the Edmonton and Calgary cases had at least one warrant issued (but no prison committal order). The majority of cases in both courts (Calgary: 55%, and Edmonton: 60%) contained summonses, both served and unserved. (These last percentages do not include cases which contained warrants and/or prison committal orders.) (FC: 2.6.1, p.108.)

* The figure of 50% may be inflated by the large amount of missing information in the files.

While enforcement proceedings were initiated quite commonly through Family Court, they did not necessarily result in the collection of money owed. In the case of Edmonton, which showed the greatest level of enforcement, nearly a quarter of the records examined showed no evidence of payment over the duration of the case, and a majority of all cases were in arrears at the time of the study. This may mean that either the enforcement proceedings were not followed through adequately or that they simply were not effective.

There was considerable evidence that summonses and warrants were frequently not served. Forty percent of the Edmonton cases contained unserved summonses and 14% contained unserved warrants. (FC: 2.6.2, p.111.)

The next step in the enforcement procedure is tracing. It is often stated that maintenance order defaulters are a difficult group to locate. This hypothesis was examined in the study of the defaulters. In this study, a systematic tracing procedure was followed using common sources such as telephone directories and addresses from the Motor Vehicle Licensing Branch, then the resources of the Search Unit of the Department of Social Services and Community Health, and finally, the services of a professional tracing company. It was found that nearly half of the defaulters could be traced easily and another 25% could be found without using extensive tracing techniques. (SD: 4.1, p. 373 .) The conclusion seems to be that the problem of tracing defaulters is not of sufficient order to explain the weak follow through of enforcement proceedings.

Another factor which relates to the efficiency of enforcement proceedings is the quality of Family Court record-keeping systems. Researchers were unable to find about 46% of the ledger cards relating to the sample of current maintenance order files in Calgary. When the degree of enforcement was examined in cases with and without ledger cards, it was found that cases without ledger cards were substantially less likely to be enforced than cases with ledger cards.

In addition to the Family Court Records Study, there was some information relating to enforcement collected from the Survey of Women. Women were asked whether they had attempted to take their ex-husbands to court; if they did, whether they appeared in court; if they did appear, whether they began to pay; and if they began to pay, whether they continued to pay. The results were not encouraging. Of those who attempted to take their ex-husbands to court, half said he did not appear. Of those who said that he appeared, nearly half reported that he did not begin to pay. Of those who said he began to pay, about half reported that he did not continue to pay. Although the data was limited, the results were consistent with findings from the Family Court Study and comments made by women.

Some of the women commented on the inadequacy of court administration as a reason for poor payment or non-payment of their orders. Comments such as: "the Family Court structure does not seem to have sufficient teeth to enforce the maintenance order reasonably..." and "Family Court is too lax in enforcing their laws" were not uncommon. (SW: 1.1, p. 198.)

These comments and others like them suggest that there is a lack of faith among many women concerning the effectiveness of enforcement proceedings. About one half of the women reported that their ex-husbands had not paid their orders regularly. When asked why this was the case, over a quarter said that the court would not be able to make him pay or that it was too much trouble for her.

The Survey of Men also examined the issue of enforcement. A minority (12%) of the respondents who said they paid their orders regularly, paid because of the law. However, in examining the comments, it was clear that some paid out of deference to the law and others, because of the threat of enforcement. The former view is represented by comments such as: "I am paying because I am legally obliged to." and "... because of court order.". "Afraid to go to jail" and "my company would not tolerate a garnishee order" indicate a specific fear of enforcement.

Although a minority of respondents indicated that the major reason for payment was fear of enforcement proceedings, the answers of defaulters to a series of questions suggest that tightened enforcement would meet with resistance. Those who were not regular in their payments were asked if they would pay if they were threatened with (1) legal proceedings, (2) a garnishee order, and (3) imprisonment. Roughly a third of those answering said they would pay if threatened with legal proceedings or imprisonment, and only 21% said they would pay if threatened with a garnishee order. In each case, however, more said they would not pay when threatened with such enforcement than would pay. A few respondents were defiant: "I would not work if <u>forced</u> to do anything by anyone" and ".....not even the law could force me to pay".

In summary, the findings with respect to the effectiveness of enforcement proceedings are inconclusive. Taking initial action is very common. The evidence seems to suggest that enforcement is less effective with each additional step in the process. If measures are taken to tighten enforcement when a default continues to occur, there is not indication in the findings that commensurate increases in payment will occur. If the opinions of the men surveyed were to be taken seriously, better enforcement may result in further resistance.

Factors Relating to and the Reasons for Payment and Non-Payment of Maintenance Orders

One of the main aims of this study was to investigate the reasons for the payment and non-payment of maintenance orders. Two means were used to obtain this information. The first was an examination of many possible factors which could be associated with payment and default such as ages, income, access arrangements and so on. Secondly, both men and women were asked why payments were made or not made.

The factors analyzed in the study are summarized briefly below:

Duration of Marriage: There appeared to be a positive correlation between the duration of marriage and the payment status of cases in Edmonton Family Court. (FC: 3.2.1, p. .) This relationship was found to be stronger in the Survey of Men. Excellent payers were married twice as long as intermittent payers and non-payers. (MS: 13.2, p. 299.)

Number of Dependent Children: No relationship was found between the number of dependent children and the payment status of the cases in Edmonton Family Court. (FC: 3.2.2, p.115.)

Ages of Children: In the Edmonton Family Court study there was more likelihood of payments to be made on orders relating to children of less than seven years of age than for older children. (FC: 3.2.3, p. 115.)

Amount of Order: There was no association between the amount of the order and the regularity of payments in the Edmonton Family Court study. (FC: 3.3.2, p.117.) This was also the case in the Survey of Men, although there was some indication that the larger orders were better paid. (SM: 13.7, p.301.) In the Survey of Women the mean amount of awards for non-payers was lower than that of excellent payers. However, this relationship did not hold across all four payment status categories used in this study. (SW: 13.11, p.192.)

Access Arrangements: The analysis of Family Court records was inconclusive as in a great majority of cases access arrangements were termed as "reasonable". (FC: 3.2.4, p.116.) Men were asked whether or not they were satisfied with the access arrangements but no statistical relationship was found between satisfaction with access and payment status. (SM: 13.2, p.299.) However, in the comments section, there were some respondents who gave dissatisfaction with access arrangements as a reason for default. However, they were probably too few in number to show up in the statistical analysis.

Other Family Responsibilities: In the Survey of Women there appeared to be a positive correlation between the ex-husband's involvement in a new relationship and payment status.* (SW: 13.2, p. 188.) Ex-husbands who had remarried or who had formed a common law relationship tended to be better payers. The same pattern held true in the Survey of Men. (SM: 13.16, p. 307.)

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* These categories are explained at p. 16.

In the Edmonton Family Court Study there was no observable association between the marital status of husbands and the payment of maintenance orders. (FC: 3.4.1, p.117.)

Income, Assets, Debts, Net Worth: There were too few instances of cases of Family Court files which contained this information to allow for such an analysis. (FC: 4.2, p.119.)

Income data was obtained in the Survey of Women and the Survey of Men. Women were asked to estimate the net yearly income of their ex-husband and this variable was cross-tabulated with payment status. Although there appeared to be a positive correlation between income and payment status, it was weak. (SW: 13.4, p.180.) There did not appear to be any relationship between the yearly incomes of wives and the payment status of husbands. (SW: 13.5, p.190.)

In the Men's Survey there was a positive correlation between yearly income and payment status. (SM: 13.14, p.300.) This association also held when the mean net monthly incomes of husbands were compared by payment status categories. Intermittent payers had lower net monthly incomes than excellent payers but excellent payers and non-payers had similar mean incomes. This suggests that low income is associated with irregular payment, but not highly associated with complete non-payment. (SM: 13.15, p.307.)

The mean net monthly incomes of the wives were compared by payment status but no relationship was found. (SW: 13.12, p. 193.)

In addition to net monthly income two indices of 'affordability' were created. The first one was income relative to social assistance rates and the second was maintenance payments relative to a measure of disposable income, (i.e. net income of family unit less the appropriate social assistance rate for the family unit.) For an explanation of the development of these indices see: (FC: 4.0, p.119.) In both cases it appeared that financial difficulties in making payments were associated with irregular payment but not with non-payment.

The questionnaires for women and men also asked for information concerning debts. It was evident that some respondents confused monthly payments on debt with total debt, the data was regarded as too unreliable for further analysis.

The questionnaire also asked about ownership of a home. Men who owned their own home appeared to be better payers than those who did not. This finding occurred both in the men's and women's survey. (SM: 13.17, p.308, and SW 13.8, p.191.) There did not seem to be a relationship between ownership of a home by the wife and the payment status of the case.

Reasons for Payment and Non-Payment Given
by Men and Women Surveyed

The reasons for payment and non-payment were probed in two ways in the Survey of Men. First, a number of reasons for payment were stated and the respondents were asked to indicate whether they agreed or disagreed with them as they applied to their situation. Secondly, the men surveyed were asked to specify and expand upon the main reason for their payment or non-payment. Women were asked in an open-ended question to specify why they thought their ex-husbands paid or did not pay.

The most common reason (76%) for payment offered by men was a continued sense of responsibility for the welfare of the children. (SM: 12.3, p. 297.) Over 60% of the respondents who added comments gave this as the main reason for paying. (SM: Appendix B, p.327ff) The majority of women surveyed who said that their ex-husbands paid regularly also gave responsibility as the main reason. (SW: Appendix C, p.207.)

In the Survey of Men the continued sense of responsibility was followed by the desire to preserve any remaining goodwill in the family (60%). Slightly less than half of the respondents (47%) answering this series of questions indicated that one of the reasons they paid was because they did not want to see their ex-wife go on to social assistance.

It is worth noting that three of the reasons for payment offered in the questionnaire referred to threats of court proceedings, wage garnishments and imprisonment. Only a minority of respondents (18 to 23%) indicated that such threats prompted them to pay.

In the Survey of Men the most common reason given (63%) for not paying maintenance obligations regularly was that the ex-wife could support herself. Slightly less than half of the respondents (46%) said they did not pay regularly because they could not afford it. This reason was closely followed by feelings that the ex-wife was responsible for the marriage breakdown and that money meant for the children went to the ex-wife instead. (SM: 12.4, p. 297.)

According to the women surveyed the most common reason for irregular or non-payment was irresponsibility on the part of the ex-husband. This reason was closely followed by resentment against the ex-wife. There were several other reasons mentioned by smaller groups of respondents including ex-husband's financial problems, obligations to new family, and poor enforcement.

In reviewing this data it seems that in most cases the decision to pay or default on maintenance obligations hinges on a continued sense of responsibility for the welfare of the children despite the marriage breakdown. The majority of both the men and women interviewed stated that a sense of responsibility was the main reason for regular payment, and it seems reasonable to take them at their word.

A major explanation given by men for irregular or non-payment was not being able to afford payments. To test this assertion, disposable income was measured by using social assistance rates as a base line. (SM: 4.0, p. 267.) When this index was related to payment status it was found that lack of disposable income seemed to be related to regular payment but not to complete non-payment. Although a third of the men indicated that they were poor payers or non-payers, over 80% of the sample seem to have sufficient income to meet their obligations. (SM: 4.7, p. 270.) These results suggest that the ability to afford maintenance payments is relative: it depends on the priority accorded to maintenance payments relative to other financial obligations. This comes across very clearly in some of the comments of men such as: "Can't afford it sometimes due to other committments of my own to my second marriage.", "Can't afford it. Wasted money. Never see child." and "there were more important things to be paid.".

The comments of men also provide an idea of why some men do not accord high priority to their maintenance obligations; in other words why some do not accept this responsibility. The most frequent comments were: continued feelings of bitterness toward their ex-wives, dissatisfaction over custody and access arrangements, and feelings that they had been treated badly by the legal system.

Many of these reasons may reflect a deeper problem: a failure on the part of the husband to come to terms with a new relationship. What was a relationship between man and wife and father and children is transformed into a relationship between debtor and creditor. In addition, the man must learn to accept a new role as an absentee provider. One very articulate respondent expressed the situation thus:

> I feel that the courts do not adequately support the ex-husband in any supportive method. Family court appears to be only concerned with the financial aspect of the divorce. I have not seen two of my children for two years even though I have the legal rights to visit them every two weeks. .... I have been in constant contact with my lawyer for the past 2 1/2 years in attempts to gain some visiting right to my children to no avail. The legal system's attitude appears to deny a father any rights to maintain a relationship with (his children). No person can tolerate the loss of someone dear to him without a fight, but if everyone (including our legal system)

> tells him he should no longer have a right to that part of him, he loses his desire to care. He then begins to create a new atmosphere for his hopes and desires. He returns to being "one' to caring for himself and then if his life brings new feelings, he begins to build on that. He develops a desire to work only for what he has, and not for what he has lost. During my marriage, my wife was supported, often encouraged, to leave the marriage and take the children, by social service agencies. Each time this happened, I was not given any information as to my children or my ex-wife's whereabouts. In my case, I feel society helped bring about the demise of my marriage. It is because of this that I feel I don't feel a strong sense of responsibility to the support of these children.

If this premise is true and it does seem to be supported by the data, then it suggests that better efforts to enable couples involved in divorce to come to an understanding concerning their future relationship, may lead to better payment and less acrimony. If the comments made by men on the legal system are to be taken into account, men commonly feel bitter and poorly treated. These feelings can hardly lead to a positive attitude towards the payment of maintenance orders.

The Adequacy of the System of Court Administration Relating to the Granting of Maintenance Orders and their Subsequent Enforcement

An ancillary aim of this study was to determine the adequacy of Court administration relating to the granting of maintenance orders and their subsequent enforcement. There were two sources of data which applied to this aim: the adequacy of information recorded in the files and the comments of men and women who were involved with maintenance orders.

There was a considerable amount of missing information in the Supreme Court files. Of course, court files are not set up to meet the requirements of sophisticated research but to provide an information base for the administration of justice. The concern is with missing information as it relates to the granting of maintenance orders. The following important information was not recorded in many instances in the Supreme Courts of Calgary and Edmonton: income of each spouse, employment status, and whether or not a spouse was on social assistance at the time of the petition. Information concerning assets, debts and net worth of the spouses was recorded very rarely. The fact that such information was not entered in the files does not necessarily mean that it was not put before the court, but it seems to be the case. Given the fact that over 80% of the divorces in Edmonton and Calgary were uncontested, and the short time accorded to the hearings* it would seem to be unlikely that the courts received validated evidence to review the fairness and appropriateness of the minutes of settlement.

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* In a separate research project undertaken by I.L.R.R. which involved the observation of 200 divorce cases, it was found that the average case was dealt with in only 5 minutes.

There were inadequacies uncovered in the filing systems of Family Courts which were of perhaps a more serious nature than those found in Supreme Courts. First, the record-keeping systems varied from court to court. For example, ledger cards in Calgary and Grande Prairie were not created until a payment had been made, whereas in Edmonton and Lethbridge they were opened on the registration of a Supreme Court order or on the making of a Family Court order. In addition, information was incomplete in the files of all four court locations. Information relating to income, assets, and debts was recorded very rarely and was not kept up to date. In Calgary and Grande Prairie in particular there was considerable evidence of poor record-keeping in the case of ledger cards. It was often unclear as to whether the payments recorded referred to maintenance orders or orders of arrears. Variations on orders encountered in the files were often not recorded on the ledger cards. Nearly half of the ledger cards relating to current orders could not be located in Calgary, even with the generous assistance of court staff: the comparable figure for Grande Prairie was 40%.

About half of the 100 or so men who added comments to the questionnaire commented negatively on the treatment they received on the part of both the Supreme and Family Courts. The immediate impression one gains from reading the comments presented in Appendix D of the Survey of Men is a sense of bitterness and helplessness in the face of what is perceived to be an arbitrary legal system.

Many men felt that the legal system in the area of divorce is biased against their interests. Comments such as: "the women have all the rights and they know it," "there does not appear to be fairness or reasoning in the way lawyers or judges....treat the man involved", and "the courts are very lenient to women" were very common. Some men went on to specify why they felt unfairly treated. The most common complaints were lack of information concerning legal rights, custody decisions, the impersonal nature of the process, the assumption of guilt on the part of husbands and the difficulty of seeking legal recourse when the conditions of divorce decree had been violated by the wife.

Men were not alone in their complaints against the legal process. Women were also unhappy - particularly with poor enforcement. Their complaints generally concerned the seeming inability of courts to force the husband to pay and the amount of time and effort required by the wife to secure court action. Some typical comments were: "my husband is $2,200 behind and we are going to court about once a month and nothing is done", "the court was so slow in ordering payment, we had absolutely no money at all", and "can't see any good in Family Court. When I go I get less money...".

It is probably impossible for courts to award maintenance, decide upon custody and enforce orders to the satisfaction of everyone and the opinions of those involved should be taken in this light. The quantitative and qualitative sense of dissatisfaction however is still of note. Whether or not the perceptions of the people involved are valid is in one sense, beside the point. It is not only important that justice be done, but it is also important that justice be seen to be done.

Social Assistance and Maintenance Awards

In the introduction to the report, the effect of divorce on the demands placed on social assistance was mentioned. Some estimate of the extent of this problem can be obtained from each of three studies: the Supreme Court Records Study, the Family Court Records Study, and the Survey of Women. The estimate provided by each study refer to the proportion of women on social assistance at particular times. The percentage of women on social assistance in the case of the Supreme Court Study refers to those on social assistance at the time of petition. In the case of Family Court Study it refers to those on social assistance at the time of the first show cause hearing. The figure given by the Women's Survey relates to those on social assistance at the time of the study.

Among those cases containing maintenance orders and involving dependent children roughly one of every three was receiving social assistance at the time of petition. In cases without dependent children, the percentage was about half of this but the number of cases sampled was very small. (SC: 2.1.5, p. 35.) There were very few instances of the husbands receiving social assistance.

The Family Court Records Study indicated that about a quarter of the wives were on social assistance at the time of the first show cause hearing. (FC: 2.2.2, p. 89.)

Another figure was provided by the Survey of Women. This survey found that about one women of every five was on social assistance at the time of the interview. (SW: 2.6, p. 154.) Women who were on social assistance were asked if this was because of the marriage breakdown. Over 80% replied yes to this question. (SW: 3.3, p. 156.) In addition, over two-thirds of the respondents said that they had not recieved social assistance during their marriage. (SW: 3.2, p. 156.)

CONCLUSION

The main aim of this study or collection of studies was to collect and present empirical data relating to the issue of the payment and non-payment of maintenance orders in its many aspects and ramifications. The wide ranging nature of the inquiry was a function of both the importance of the issue to law makers, the legal profession and governmental organizations and the almost complete lack of quality data concerning the matter.

An attempt has been made to organize the findings and conclusions around the seven study objectives. However, no attempt has been made to carry the analysis through to recommendations relating to legal and policy reform. It was felt that this process should take place in a much wider and more public forum than could be provided by the project's Steering Committee. As a result, the report stands as a preliminary step in what should be a much larger process. The onus is on the various constituencies concerned with the subject matter of the study to examine the results carefully with a view to their ramifications on current perceptions of the problems and proposed ways of dealing with it.